

CONNECTICUT LEGAL RIGHTS PROJECT

P.O. Box 351, Silver Street, Middletown, CT 06457

Telephone (860) 262-5030 • Fax (860) 262-5035

Testimony of Thomas Behrendt, Esq.

Judiciary Committee

March 5, 2012

**Support for H.B. 5287, AAC the Appointment of a Guardian Ad Litem
for a Person Who is Subject to a Conservatorship Proceeding
or a Proceeding Concerning the Administration of Treatment
for a Psychiatric Disability**

Sen. Coleman, Rep. Fox, distinguished members of the committee, my name is Tom Behrendt. I am Counsel Emeritus with the Connecticut Legal Rights Project (CLRP), a legal services organization that advocates for low-income adults who have, or are perceived to have, psychiatric disabilities. Although CLRP does not represent clients in probate court proceedings where they have court-appointed counsel, it frequently assists them and their counsel, and CLRP represent clients in appeals of conservatorship proceedings. We certainly hear about the problems and try to help correct them.

I urge you to enact House Bill 5287, which removes the broad discretion of the courts to appoint a guardian ad litem in those cases involving an adult who is represented by counsel *and* is either a respondent in a conservatorship proceeding or already has a conservator. Identical proposals were approved by this committee in both the 2010 and 2011 legislative sessions; The Senate passed the bills by unanimous vote in each of those years. The bill is the product of CLRP's work with the office of the Probate Court Administrator and DMHAS. In addition, the bill has the support of the Elder Law Section of the Connecticut Bar Association, Legal Services, Judge Knierim's office, and the Connecticut Office of Protection and Advocacy for Persons with Disabilities.

This proposal does not affect children at all.

Section 45a-132 of the Connecticut General Statutes authorizes a court of probate or a superior court to appoint a guardian ad litem (GAL) for "any minor or incompetent, undetermined or unborn person." This is a discretionary appointment, without prerequisites or notice.

The present proposal, H.B. 5287, sets forth criteria for appointing a GAL in those limited cases that involve an adult who is represented by a lawyer *AND* is either (1) a respondent in a conservatorship proceeding or (2) already has a conservator. H.B. 5287 has no impact on minors; it does not affect children.

Furthermore, this proposal does not affect people (including those involved in termination of parental rights) who do not have conservators or who do not have lawyers. A judge may appoint a GAL under this proposal unless a person has a lawyer AND is either a respondent in a conservatorship case, or already has a conservator. Even in those cases, there is an exception for the situation when a person's attorney is unable to ascertain the preference of the person.

Rationale:

1. A conservatorship proceeding addresses the ability of the person to make and communicate decisions about his or her life. Appointing a GAL **prejudges** that case by assuming that the person is incapable or incompetent. Therefore, this bill would prohibit the appointment of a GAL in most conservatorship cases.
2. A conservator's duty is to act for the person in those areas where he or she has been found incapable. Adding a GAL when a conservator has already been appointed increases expenses without benefiting the conserved person. Therefore, this proposal prohibits the appointment of a GAL which is **duplicative** in most cases when a person already has a conservator.
3. There are **rare situations** when an attorney cannot determine the preference of the client. Therefore, under this proposal the court may appoint a guardian ad litem after canvassing the individual to determine his or her preference, or his or her inability to express that preference.
4. Currently, there is no language in the statute that specifies the **duties or responsibilities** of a GAL for an adult. H.B. 5287 fills that void by tracking the conservatorship statute: The duty of a guardian ad litem appointed under the exception is to ascertain whether an attorney's proposed advocacy or a conservator's proposed course of action is the least restrictive and least intrusive means of addressing a respondent's or conserved person's affairs or personal care.
5. Currently, guardians ad litem can remain on a case forever -- and this is frequently the situation. Therefore, H.B. 5287 provides an **end date** to the appointment after a report is filed.

I urge you to act favorably on H.B. 5287. Thank you very much for your time and attention.